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Mass.Gov Home

State Agencies

State Online Services

DOR Home

For Individuals and Families

For Businesses

For Local Officials

For Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > 1984 and Prior > 1979 Rulings >

Letter Ruling 79-5: Vessels of Fifty Ton Burden or Over

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Select an area to search

Search

March 21, 1979

You request a ruling with respect to the Massachusetts sales tax status of work proposed to be performed by ***** ("Contractor") for ***** ("Purchaser").

Under the contract the purchaser will deliver to the contractor 550 foot 7623 ton break bulk cargo vessels ("original vessels") for conversion to 665 foot 9350 ton self-sustaining break/container vessels ("resultant vessels"). The contractor will construct a 115 foot midbody for each vessel; divide each of the original vessels in two; float the three portions into alignment for joining; replace the crane and stern tube bearing of the original vessels; install twin cranes on the midbody; and add or modify radar, navigation, ladders and safety provisions, pumps, refrigeration and fuel tanks. The resultant vessels will be able to compete for container business, a segment of the shipping market from which the original vessels have been excluded.

Massachusetts General Laws Chapter 64H, Section 6(o) provides an exemption from the excise imposed by Section 2 for "sale of vessels...of fifty ton burden or over when constructed in the commonwealth and sold by the builders thereof". Section 1(12)(b) provides that "sale may include "the producing (or) fabricating...for consumers who furnish...materials used in the producing (or) fabricating".

The cost, complexity and extensity of the work to be undertaken under the contract, and its impact upon the function and potential usefulness of the original vessels result in "vessels constructed in the commonwealth". The increment in carrying capacity of each ship exceeds 50 tons burden. Since the consideration to be received by the purchaser will be vessels constructed in the commonwealth, and since Section 1(12)(b) provides for a purchaser to provide materials used in production, the requisite "sale by the builder" will take place.

It is ruled that the [Contractor] will not be subject to sales tax under Chapter 64H on the sale of the resultant vessels to the purchaser. This ruling is limited to the sale by [Contractor] to [Purchaser]. It does not extend to purchases made by [Contractor] in order to perform its contract with [Purchaser]

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH:LS:cr

LR 79-5